IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7474 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALWANTBHAI MAGANLAL CHAUHAN

Versus

MUNICIPAL CORPORATION OF THE CITY OF SURAT

Appearance:

MR YN RAVANI for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

Mr. I.M.Pandya, ASSTT. GOVERNMENT PLEADER for Respondent No. 2

MR MD PANDYA for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 20/02/2001

ORAL JUDGEMENT

The petitioner alongwith other persons is

the owner of the land bearing survey no. 172 of village Majura, Ta: Choryasi, Dist: Surat admesuring 44010 sq.mtrs. The Surat Urban Development Authority reserved the aforesaid land under section 12(2)(b) of The Gujarat Town Planning and Urban Development Act, 1979. (hereinafter referred to as the "Act"). It is alleged that in the year 1967, the land was reserved for a slaughter house for a period of more tha 10 years and lateron in the revised plan, it was reserved for Central Workshop for Surat Municipal Corporation. The draft development was published by the respondent Corporation on 28th February, 1996. After publication of the approved development plan, the petitioner submitted an application for grant of permission for development as provided under section 27 of the Act on 22.9.1999 and the petitioner tried and tried his best to contact the officers of the Corporation, however, they had not given any reply to the application made by the petitioner for development of the property. The application of the petitioner was rejected on 15.12.99 which is at Annexure A-2 with the affidavit-in-reply filed by the respondent no.1. When neither the Corporation purchased the land of the petitioner nor acquired by the agreement within a period of 10 years from the date of coming into force of final development plan. The petitioner therefore, served a notice to the Government on 7th June, 1997 requiring the authority to acquire the land under section 20 of the Act and if within six months from the date of the service of such notice, the land is not acquired or no steps are taken for its acquisition, the designation of the land shall be deemed to have lapsed. Thereafter, the petitioner moved this petition.

2. The contention of the learned counsel for the petitioner is that sections 20 and 21 of the Act make it clear that the intention of the legislature is not to reserve any land perpetually and freeze the development of the land either by the owner of the land or by the State. Within a period of 10 years, it is required to be renewed and during that period, the land has not been acquired and the land owner has an option to request the Government by a notice in writing to ask for acquired land afer service of the notice and within a period of six months, if the land is not either purchased or acquisition proceedings have not been commenced, the reservation made in the development plan will be deemed to have lapsed. The petitioner has already served a notice on 7th June, 1997 on the authorities concerned. Still however, the land has not been acquired nor it has been purchased and no land acquisition proceedings have been taken within a period of six months and so the

reservation of the land would be bad. Such a restriction is an unreasonable restriction, unconstitutional and invalid and that deprives a citizen of his right under Article 21 of the Constitution. This petition has therefore, been filed for a direction and declaration that the building permission pursuant to the application dated 2.4.1996 submitted by the petitioner is deemed to have been granted in respect of the land in question and the respondent Corporation as well as its officers be restrained from interfering with the construction and development work which may be carried out by the petitioner over the land in quetion in accordance with the development plan submitted together with the application on 2.4.96. Alternatively, the petitioner has prayed for a direction to the Municipal Corporation to purchase the land in question at the prevailing market rate.

3. The learned counsel for the petitioner relied on the decision of Division Bench of this Court in Special Civil Application no. 108 of 1994 delivered on 24th November, 2000 in which it has been observed that section 20 which confers a valuable right on the land owenr or person interested in it to insist on the authority to acquire the land for the purpose of town planning within a resonable fixed period of ten years has to be so cosntrued as to allow its operation in a given contemplated situation. The provisions contained in section 20 cannot be construed in a manner that it would seldom be brought into operation or can be never brought into effect as and when the final development plan is made subject of revision under section 21 of the Act. It is also observed that on a careful consideration of the submissions made by counsel for the contending parties, we find it difficult to accept the argument advanced on behalf of the State that within ten years or on expiry of ten years of the original development plan, whenever there is a proposal by issuance of a draft revised final development plan, the land owner would lose his right of getting the land defreezed by serving six months' notice under sub-section (2) of section 20. The previous operation of sections 9 to 20 resulting into preparation of a final development plan and on its commencement with expiry of ten years, a right created in favour of the land owner to serve six months' notice to get his land dereserved is not nullified by subsequent revision of the plan.

It is also observed that it is difficult to acept the contention advanced on behalf of the State that as and when the process of preparation of draft

revised development plan commences under section 21 of the Act before or on expiry of ten years period counted from the earlier final development plan, the owner must go on waiting for further period of ten years from each revised development plan for the purpose of invoking his right of service of six months notice under section 20(2) of the Act. The conclusion of this Court is that on interpretation of sections 20 and 21 of the Act is that mere issuance of a draft revised final development plan under section 21 of the Act by the Authority, shall not take away the right already accrued and vested in the land owner on expiry of 10 years period from the existing final development plan and failure of the authority to acquire the land in six months notice period.

3. Mr. P.G.Desai, learned counsel for the respondent Corporation has fairly conceded that the matter in dispute is fully covered by the decision of the Division Bench of this Court as referred to above. But Special Leave Petition has been filed before the Supreme Court and that petition has been fixed for final hearing on admission stage in the month of August, 2001. It is not pointed out by Mr. Desai that any stay against operation of the decision of the Division Bench has been granted by the Supreme Court. The learned counsel for the parties suggested that this petition be disposed of in view of the judgment of the division bench of this Court and the petitioner will undertake not to make any development till the decision of the Supreme Court in the SLP as aforesaid. The Corporation will not give permission for the development till the decision is taken by the Su0preme Court in the SLP.

4. In the facts and circumstances, this petition is allowed. The reservation/designation of the land in question will be deemed to have lapsed and will not be operative. The petitioner will be entitled to proceed on the basis that there is no reservation or designation of the land in question for any specific period. The petitioner will file an undertaking before this Court within a month to the effect that he will not make any development without express permission of the respondent Corporation. The petitioner will not transfer or encumber the property in question without permission of the Respondent Corporation. Rule made absolute accordingly with no order as to costs.

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